

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

Case No. 12-cr-20095

v.

Honorable Thomas L. Ludington

KELLI RAE SMITH,

Defendant/Petitioner.

**ORDER ADOPTING REPORT AND RECOMMENDATION, GRANTING
PLAINTIFF'S MOTION TO DISMISS, DENYING DEFENDANT'S MOTION TO
VACATE, DENYING A CERTIFICATE OF APPEALABILITY, AND DENYING
LEAVE TO PROCEED *IN FORMA PAUPERIS* ON APPEAL**

On October 27, 2016, Defendant/Petitioner Kelli Rae Smith filed a *pro se* motion to vacate her sentence under 28 U.S.C. § 2255. *See* Def.'s Mot. Vacate, ECF No. 43. She made different claims that her counsel was ineffective. First, counsel was ineffective because he committed errors that "caused [her] sentence to be greater than it would have been." *Id.* at 5. Second, her counsel was ineffective for failing to question witnesses. Third, her counsel was ineffective for not advising her of her rights at sentencing. And fourth, her counsel was ineffective for not objecting to her enhancement for obstruction of justice and her loss of her acceptance of responsibility points at sentencing.

On March 10, 2016, Magistrate Judge Patricia T. Morris issued a report recommending that Defendant's motion be denied because, in her plea agreement, she waived her right to collaterally attack her sentence and does not claim that her plea was unknowing or involuntary. *See* Rep. & Rec. 5–7, ECF No. 60.

Although the Magistrate Judge's report explicitly stated that the parties to this action may object to and seek review of the recommendation within fourteen days of service of the report, neither Plaintiff nor Defendant filed any objections. The election not to file objections to the Magistrate Judge's report releases the Court from its duty to independently review the record. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). The failure to file objections to the report and recommendation waives any further right to appeal.

Accordingly, it is **ORDERED** that the magistrate judge's report and recommendation, ECF No. 60, is **ADOPTED**.

It is further **ORDERED** that the Government's motion to dismiss, ECF No. 49, is **GRANTED**.

It is further **ORDERED** that Defendant's Motion to Vacate, ECF No. 43, is **DENIED**.

It is further **ORDERED** that a certificate of appealability is **DENIED**.

It is further **ORDERED** that permission to proceed *in forma pauperis* on appeal is **DENIED**.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: April 22, 2016

<p style="text-align: center;">PROOF OF SERVICE</p> <p>The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on April 22, 2016.</p> <p style="text-align: right;"><u>s/Amanda Chubb for Michael A. Sian</u> MICHAEL A. SIAN</p>
